IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(Crl.) 923/2001

Vimal Kumar Behl ...Petitioner through
Mr. Sunil Mehta, Adv.

Versus

Union of India & Ors. ...Respondent through
Ms. Barkha Babbar, Adv.

Date of Hearing : January 07, 2008

Date of Decision : January 11, 2008

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE P.K. BHASIN

1. Whether reporters of local papers may be allowed to see the Judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J.

J U D G M E N T

1. This Writ Petition prays for the issuance of a writ of Habeas Corpus or any other appropriate writ, order or Direction quashing and setting aside the impugned order of detention bearing F. No.801/11/97 PIT NDPS dated 24.2.1997 (Annexure A hereto), issued by Shri R.K. Tewari, the Deputy Director General (Co-ordination), Narcotics Control Bureau, New Delhi the respondent No.2 herein against the petitioner Vimal Kumar

Behl under section 3(1) of the PIT NDPS Act 1988 and direct that the petitioner be released from detention forthwith and be set at liberty.

2. The impugned Order is dated 24.2.1997 in which the Deputy Director General (Coordination), Narcotics Control Bureau considered it necessary, with a view to preventing the Petitioner from engaging in the procurement, storage and abetting in the export from India of narcotic drugs, to detain the Petitioner and to keep him in custody in the Central Prison, Pune. The grounds for detention of the Petitioner were appended to the impugned Order and are of even date. Identical Orders had been passed in respect of Shri Satya Prakash Behl, the only variation being the substitution/interchange of the names of these two persons at the relevant part of the Order and Grounds of Detention.

3. Shri Satya Prakash Behl had filed a Writ Petition in this Court bearing Criminal Writ No.241/1997 which came to be decided in his favour by Judgment dated 17.10.1997. The Division Bench comprising Arun B. Saharya and J.B. Goel, JJ had specifically noted the existence of some audio cassette

recording and the failure of the Respondents to provide copies thereof, together with transcripts, to the Petitioner. The argument, which has been raised before us, is that the audio cassette was not a 'relied upon' document had not impressed our learned Brothers. Relying on *Smt. Shalini Soni -vs- Union of India*, AIR 1981 SC 431, *Tushar Thakkar -vs- Union of India*, AIR 1981 SC 436, *S. Gurdip Singh -vs- Union of India*, AIR 1981 SC 362, *Mehdi Mohd. Zoudi -vs- State of Maharashtra*, AIR 1981 SC 1752 and *Kirti Kumar -vs- Union of India*, AIR 1981 SC 1621 it was held by the Division Bench that delay in complying with the requirement invalidated the Detention. It was also opined that the Detaining Authority had relied on earlier Orders as additional inputs for arriving at its satisfaction, which was impermissible. The Division Bench did not find favour with the argument that where there are several grounds for Detention, each one can be severed from the other and if anyone of them can sustain or justify the detention, the unsatisfactory nature of the others would not invalidate the Order. By a detailed Judgment the Writ Petition of Shri Satya Prakash Behl was allowed.

4. Arguments, some of which are similar to those raised in Criminal Writ No.241/1997, have been raised by Ms. Barkha Babbar, learned counsel for the Respondents, including reliance on *Kamarunnissa -vs- Union of India*, AIR 1991 SC 1640 which holds inter alia that unless prejudice is pleaded and proved by the Petitioner in respect of non-supply of any document, the Detention Order would not be vitiated.

5. In our opinion, the Writ Petition stands fully covered on all fours by the decision of the Division Bench of this Court in Criminal Writ No.241/1997 filed by Satya Prakash Behl. As we have recorded at the commencement of this Judgment the Detention Order as well as grounds of both persons are virtually identical. We, therefore, find ourselves precluded from entering into a consideration of precedents on which reliance has been placed by the Respondents. This is for the simple reason that Detention Orders of Shri Satya Prakash Behl as well as his nephew, Shri Vimal Kumar Behl, the Petitioner before us, are, for all intents and purposes, identical. Since Shri Satya Prakash Behl has succeeded in his Writ Petition as far back as on 17.10.1997, the Petitioner must receive the same jural treatment. Mr. Sunil Mehta, learned counsel appearing for the

Petitioner, states that a Special Leave Petition has been preferred against the decision in Criminal Writ No.241/1997, which was dismissed in *limine*. Learned counsel for the Respondents is unable to contradict that the said Judgment has become final.

6. In these circumstances the Writ Petition is allowed and the impugned Order of Detention as well as Declaration under Section 10 of Narcotic Drugs and Psychotropic Substances Act, 1988 is hereby quashed. Rule is made absolute. No costs.

(VIKRAMAJIT SEN)
JUDGE

January 11, 2008
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(P.K. BHASIN)
JUDGE